

STATE OF MICHIGAN  
COURT OF APPEALS

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FRANKLIN MARTIN and THOMASINE  
MARTIN,

UNPUBLISHED  
July 12, 2005

Plaintiffs-Appellees,

v

No. 252203  
Oakland Circuit Court  
LC No. 1999-017362-NZ

CITY OF SOUTHFIELD,

Defendant-Appellant,

and

OAKLAND COUNTY,

Defendant.

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Before: Cooper, P.J., and Fort Hood and R. S. Gribbs\*, JJ.

MEMORANDUM.

Defendant-appellant appeals as of right from the trial court order denying its motion for summary disposition under MCR 2.116(C)(7) and (10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs sued defendant under the trespass-nuisance exception to governmental immunity, alleging that raw sewage backed up into their basement from the sewer system that defendant owned, operated, and maintained. Defendant moved for summary disposition, arguing that the trespass-nuisance exception to governmental immunity under *Hadfield v Oakland County Drain Commissioner*, 430 Mich 139; 422 NW2d 205 (1988) did not apply because defendant did not own or create the raw sewage that allegedly intruded into plaintiffs' basement and because plaintiffs did not show a genuine issue of material fact that defendant owned or created the raw sewage.

The trial court properly denied defendant's motion for summary disposition because the *Hadfield* trespass-nuisance exception to governmental immunity may apply where a governmental agency causes, controls, or sets in motion an intrusion or interference with property that results in personal or property damage and because plaintiffs identified genuine

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\* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

issues of material fact with regard to whether defendant controlled or set in motion the alleged intrusion of sewage into plaintiffs' basement.

Affirmed.

/s/ Jessica R. Cooper  
/s/ Karen M. Fort Hood  
/s/ Roman S. Gibbs